IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6728 of 1989

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NITIN R JETLY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6728 of 1989

MR NR SHAHANI for Petitioner

MR AJ DESAI AGP for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 29/09/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner, a Class-II Officer in the Gujarat Animal Husbandry Service, challenges the judgment and order dated 30th December, 1988 passed by the Gujarat Civil Services Tribunal, Gandhinagar [hereinafter referred to as, "the Tribunal"] in Appeal No. 347 of 1988 and seeks benefit of selection grade in the cadre of Veterinary Officer Class-III with effect from 19th October, 1971.

The petitioner came to be appointed as Veterinary Officer in Class-III service on 31st January, 1967. He was allocated to the District Panchayat, Bharuch in the year 1969. Since his allocation to Panchayat Service, the petitioner ceased to be a Government servant. The petitioner passed the departmental examination in the year 1975. On his passing the departmental examination, he was granted selection grade with effect from 14th October, 1976 in first available vacancy. The petitioner, however, claimed that Veterinary Officers junior to him were promoted to selection grade on 19th October, 1971. The petitioner was, therefore, entitled to selection grade from the said date i.e. 19th October, 1971. The claim made by the petitioner by his representation dated 17th May, 1987 came to be rejected on 7th April, 1988. Feeling aggrieved, the petitioner preferred above referred Appeal No. 347 of 1988 before the Tribunal which came to be rejected on 30th December, 1988. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr. Shahani has relied upon the Government Circular dated 16th November, 1964. He has submitted that on formation of the Panchayats, transfer of functions to the Panchayats and allocation of the State servants to the Panchayats, the departmental examinations were not held by the State Government. By the aforesaid Circular dated 16th November, 1964, the Government had issued instructions that the concerned Panchayats shall arrange for conducting the departmental examinations. He has submitted that in view of prevailing administrative chaos, the petitioner could not take departmental examination. Further, on account of his allocation to the Panchayat Service, the petitioner was not required to pass departmental examination in Accounts. Hence, the petitioner had good reason for not taking the departmental examination. The State Government had framed the Gujarat Panchayat Service [Promotions to Cadres in State Services] Rules, 1974. Under the said Rules, the petitioner became eligible for promotion to State service in Gujarat Animal Husbandry

Services Class-II. Hence, the petitioner took the departmental examination. He passed the departmental examination in the year 1975. The petitioner, therefore, cannot be denied promotion to selection grade from the date his juniors were so promoted.

Mr. Shahani concedes that the criteria for promotion to selection grade is the same as the one for promotion to higher cadre. He also concedes that under the relevant examination rules, the petitioner was required to pass the departmental examination for being eligible for further promotion. Admittedly, the petitioner did not pass the departmental examination until the year 1975 i.e. within the specified period. The petitioner's claim for grant of selection grade from the date before he was qualified for grant of selection grade is not justiciable. The learned Tribunal has considered all relevant Circulars/Resolutions/Rules and has dismissed the appeal preferred by the petitioner on cogent grounds.

No case for interference is made out. The petition is dismissed with cost. Rule is discharged.

{Miss R.M Doshit, J.}

Prakash*